IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS No 2478 to 2493 of 2004
with
FIRST APPEALS No 2494 to 2502, 2562 to 2566 of 2004
with
FIRST APPEALS No 2433 to 2437 of 2004
with
FIRST APPEALS No 2431 and 2432 of 2004
with
CIVIL APPLICATIONS No 8219 to 8234,8237,
8104, 8106, 8109 to 8113 and 8537 to 8541 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH Sd/-
and
HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 & 2 YES; 3 to 5 NO

INDIAN OIL CORPORATON LIMITED

Versus

DHAYABHAI AHSHABHAI PATEL & OTHERS

Appearance:

1. F.A.Nos.2478-2487, 2494-2502, 2433-2437 of 2004
MR MANISH R BHATT for Appellant
MR KM PARIKH for Respondent No. 1
MR ARUN D OZA GOVERNMENT PLEADER for Resp. No. 2

2. F.A.Nos.2488-2493, 2562-2566, 2431-2432 of 2004

MR MANISH R BHATT for Appellant

MR KM PARIKH for Respondent No.1

MR AY KOGJE AGP for Respondent No.2

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

and

HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 09/02/2005

C.A.V. JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.H.WAGHELA)

1. Preface:

These four groups of appeals arising from four common judgments in total 37 land reference cases having common features and the same appellant and having been argued together, are disposed by this common judgment. Since certain shocking facts were pointed out and withdrawal of even 50% of the amounts awarded by the Reference Court, which were deposited under the orders made in the civil applications for stay, was objected on behalf of the appellant and since the parties had jointly requested to take up these appeals for final hearing, the Records & Proceedings of the trial Court were called for and the learned counsel were heard at length for final disposal of the appeals.

2. First Appeals No.2478 to 2493 of 2004:

The common judgment in 16 land reference cases under Section 18 of the Land Acquisition Act, 1894 ("the Act" for short) is under challenge in this group of appeals preferred under Section 96 of the Code of Civil Procedure, 1908 and Section 54 of the Act. The lands in question were acquired for the purpose of providing green belt near the refinery of the appellant and notification under Section 4 of the Act was published on 16.10.1989. The Land Acquisition Officer had awarded Rs.15/= per sq. mtr. in Compensation Case No.41 of 1987 by his Award dated 19.11.1992 and common evidence was recorded in the Court in Land Reference Case No.1155 of 1993. The lands in question of village Koyali, taluka Vadodara were claimed to be irrigated lands having great potentiality due to its proximity to developed industrial area. The claimants relied upon oral evidence of one of the claimants, namely, Dahyabhai Ashabhai Patel (Ex.15) and

documentary evidence in the form of various awards at Exs. 16 to 26 in support of the claim of Rs.200/= per sq. mtr. The Special Land Acquisition Officer was examined at Ex.29 and the present appellant did not lead any evidence. Relying upon these pieces of evidence, the learned 3rd Joint Civil Judge (S.D.), Vadodara awarded compensation fixing the market price of the lands at Rs.150/= per sq. mtr. and awarded fabulous amounts as compensation for trees with the result that the total amount of compensation with interest and costs in this group of cases was increased by more than 10 times the amounts awarded by the Land Acquisition Officer.

3. Going through the Records & Proceedings of the lead Land Reference Case No.1155 of 1993, it was seen that claim for the acquired lands admeasuring nearly three hectares of Survey No.1470 was made at Rs.40/= per sq. ft. and Rs.1,05,000/= were claimed towards a small room and veranda for buffaloes and besides the statutory increases, without showing any claim for trees, Rs.1,80,000/= were claimed towards "limbi" as 1200/400 (sic). Thus, in all, as against the amount of Rs.3,24,775/= received under the award, an additional claim of Rs.93,09,506/= was made. By its written statement at Ex.5, the present appellant had, inter alia, stated that there was no crop except "Baval" and grass when the lands were acquired and that they were not used for any agricultural purpose. By an express order made below Ex.9, 16 reference cases from which these appeals arise were consolidated. The examination-in-chief of the only witness was produced at Ex.15 in the form of a printed affidavit in which heavy reliance was placed on the consent awards made in respect of lands of the adjoining village which were subsequently acquired. It was admitted by him in the cross-examination that no evidence of quality or yield of the crops was placed on record, that possession of the lands was taken in 1993, that no evidence as regards income from the crops or expenditure thereon was produced, that no evidence as regards income and expenditure was available, that it was true that at the time of giving up possession, no crop was lying in his lands, that no evidence as regards market price of the lands at the time of Section 4 or Section 6 notifications was produced and that the documentary evidence which was produced was related to the subsequent period. The printed examination-in-chief of this witness was dated 16.9.2002, it was produced on 20.2.2004 and cross-examination thereon was recorded on 21.4.2004.

3.1 The evidence on affidavit dated 27.4.2004 of the

Land Acquisition Officer (Ex.29) was subjected to a very short cross-examination on the same day. On 28.4.2004, advocate of the appellant, Mr.B.M.Parikh, declared by pursis Ex.30 that the appellant herein did not propose to lead any oral or documentary evidence. By a pursis at Ex.31 dated 3.5.2004, the Government Pleader also declared closing of evidence for the Land Acquisition Officer. On 4.5.2004, written arguments for the claimants (Ex.32) were produced and taken on record. Another copy of the same written arguments for the claimants appears with the same endorsement "Recorded" at Ex.34. And, the written arguments for the present appellant (Ex.35) also appear to have been produced and recorded on the same date, i.e. 4.5.2004 and that is the last document before the impugned judgment. However, before that, there is another Ex.32 in the form of "List of documents" which also bears the endorsement "Recorded" with signature of the learned Judge as also the remark in the margin "Seen" with signature of the advocate for the appellant. Out of the four documents listed in the said list (Ex.32), three have been exhibited as Exs.33, 34 and 35, though the actual documents attached with the list bear Ex. Nos.34, 36, 33, 35 and 37. All these documents at Exs. 33 to 37 are photocopies supposed to be the statements of valuation of standing crops in the lands of several landholders of villages Bajwa, Koyali and Kharachiya and they are purported to have been produced in some other land reference cases. None of these documents are certified by any one as "true" or "correct" copies and nobody has deposed as to the authenticity or veracity of these tabular statements. The list at Ex.32 by which these documents were introduced is dated 5.5.2004 and the order below the list as far as it is readable conveys that the statements are regarding standing crop of the landholders and shows calculation of the amounts due on that count and since the applicants have admitted and produced them, they are permitted to be exhibited as Exs.33 to 36. The "Roznama" of Land Reference Case No.1155 of 1993, recording proceedings, shows the fact that the evidence of the parties was closed on 3.5.2004, written arguments at Ex.32 was submitted on 4.5.2004 and it was on 5.5.2004 that Exs.32 to 36 were taken on record, the arguments for the Land Acquisition Officer are shown to have been heard on 6.5.2004 and the judgment was declared on 7.5.2004. Serious irregularity without any explanation on record is not only that absolutely unauthenticated documentary evidence was introduced and exhibited in evidence after closure of evidence and submission of written arguments, but the learned advocate for the appellant was made aware of such introduction and no submission whatsoever appear

to have been made in that regard by the advocate of the appellant even as compensation on that basis were to be awarded in millions of rupees on the next day. There are reasons to believe that the documentary evidence in the form of bland statements with the list were surreptitiously permitted to be included in evidence with complicity of the parties concerned with the result that ultimately huge amounts were awarded by the impugned judgment.

4. Turning to the impugned judgment and award, broadly speaking, the market price of the acquired lands is increased from Rs.15/= per sq. mtr. to Rs.150/= per sq. mtr. on the basis of consent awards in Compensation Case No.12 of 1994 (Ex.21) for the acquired lands of the adjoining village Kharachiya and consent award in Compensation Case No.43 of 1987 (Ex.22) for the acquired lands of adjoining village Chhani as also the award in Compensation Case No.41/87(A) of the same village (Ex.25). As for the compensation for trees, in leading Land Reference Case No.1155 of 1993, a total amount exceeding Rs.13.50 lakhs is awarded against the vague claim of Rs.1,80,000/= without any evidence worth the name in that regard. Similar amounts far exceeding the claim in the plaint or even without any corresponding claim in the plaints, on the same basis are awarded in other cases of the same group.

4.1 Perusing the said awards at Exs.21, 22 and 25, it was seen that the award in Compensation Case No.12 of 1994 treated by the trial Court as the "most reliable evidence to determine the actual market price" is a consent award dated 24.11.1997 in which the date of notification under Section 4 of the Act was 8.11.1995 as against 16.10.1989 in the present case. The market price of the lands of adjoining village Kharachiya were fixed by that award at Rs.185.13 ps. per sq. mtr. after hearing and negotiations as also considering the relevant factors and on condition that no increase on account of solatium or additional amount @ 12% p.a. was to be paid. If the market price of comparable lands acquired in the present case were to be reduced at the rate of 10% per year to arrive at the proper market price before six years, i.e. in the year 1989 and if solatium and statutory benefits were discounted, it would come to around Rs.60/= per sq. mtr. As against that, by the impugned judgment, the market price is fixed at Rs.150/= per sq. mtr. mainly on the basis of the said consent award.

4.2 As for the other awards at Exs.22 and 25 relied

upon by the claimants, they are also consent awards in respect of the lands of adjoining village. The date of notification under Section 4 of the Act in Ex.22 is 28.9.1988 but the lands acquired under the same are of village Chhani which is abutting on National Highway No.8. Village Chhani is situated within the limits of Vadodara Urban Development Authority and was covered by the Urban Land Ceiling limits. And, the market price was fixed by the award at Rs.112.55 ps. after recording the consent as regards no further claims on account of solatium or other increases, additional compensation or interest.

4.3 As for the consent award in Compensation Case No.40/87(A) (Ex.25), the date of notification under Section 4 was 13.7.1989 and after considering the recent instances of sale, fertility and potentiality of lands, the market price fixed by consent appears to be at Rs.78.50 ps. per sq. mtr. with the understanding that no further amounts towards solatium or additional compensation was to be paid. Thus, the comparable case nearest in point of time appears to be the award in Compensation Case No.40/87(A) (Ex.25) whereby market price is fixed at Rs.78.50 ps. per sq. mtr. inclusive of the statutory benefits under Section 23 of the Act. Remarkably, the dates of notification under Section 4 of the Act in the comparable cases are not even mentioned in the impugned judgments.

5. As for the standing trees, none of which were even mentioned as such in the application, cryptic observation and basis for awarding amounts running into millions of rupees, in the impugned judgment, is as under:

> "11. In regard of standing trees position dated 22.9.1994, no assessment of the standing trees are shown but simultaneously below Exh.33, it shows that as per assessment by the Assistant Director of Agriculture, there was standing crops in the concerned fields of the applicants which is contrary fact on record in the cross examination by the opponent side have no personal knowledge about the assessment of the crops made by the Assistant Director of Agriculture Department, the valuation of the crops is also assessed."

As seen earlier, Ex.33 appears to have been surreptitiously introduced into evidence by the list at

Ex.32 after written arguments which were already taken on record and exhibited as Ex.32 and it appears to be just a statement showing number of trees with their value against the name of landholder and survey number of the land. No evidence whatsoever has been led about the authenticity or veracity of the statement or about the factum of such trees having ever been there. While the list at Ex.32 shows the date of statement to be 23.7.1998, the above para in the impugned judgment refers to the position of trees on 22.9.1994, as against the admission of the applicant in his cross-examination at Ex.15 that the possession was taken over in 1993 and at that time no crop was standing in the land. Thus, there was no basis for awarding any amount towards or by way of compensation for trees.

6. The impugned judgments in the following three groups of appeals suffer from the same vices and are almost identically worded and fixes the market price at the same rate on the same basis, although the exhibit numbers of the depositions and documents vary.

7. F.A.No.2494 to 2502 and 2562 to 2566 of 2004:

In this group of 14 appeals, lands of adjoining village Bajwa have been acquired for the same purpose by notification under Section 4 of the Act dated 15.6.1989 and the award fixing market price at Rs.15/= per sq. mtr. was made in Compensation case No.42 of 1987. Upon references being made under Section 18 of the Act, the cases were consolidated with Land Reference Case No.642 of 1996 and oral evidence of the applicant therein, i.e. Shri Manharbhai Ravjibhai Patel, was recorded at Ex.16. The claimants relied upon the documentary evidence at Exs.17 to 27 and the Special Land Acquisition Officer was examined at Ex.30. No oral or documentary evidence was led by the appellant. And, by a similar judgment as in the above cases and relying upon the same award in Compensation Case No.12/94 (Ex.22), the same market price at Rs.150/= per sq. mtr. is fixed in the impugned judgment. By a similar process of inducting and exhibiting documentary evidence vide list Ex.36, after the stage of arguments and without the veracity or authenticity of the documents at Exs.37 to 40 having been put to any test, lakhs of rupees are awarded as compensation for trees in Land Reference Cases No.406/94, 409/94, 415/94, 423/94, 425/94 and 642/96. In the main Land Reference Case No.642/96, as against the amount of Rs.3,57,206/= awarded by the Land Acquisition Officer, a claim of Rs.1,45,93,602/= was made and an award for

Rs.31,47,134/= and interest and costs is made under the impugned judgment.

8. First Appeals No.2433 to 2437 of 2004:

In this group of five appeals, the acquired lands were situated in the same village Bajwa and the date of notification under Section 4 of the Act was 1.9.1989. By the award dated 9.10.1992, the Land Acquisition Officer had fixed the market price at Rs.17.50 ps. per sq. mtr. in Compensation Case No.10/89. The references of the claimants were consolidated with Land Reference Case No.777/94 in which the applicant was examined at Ex.21. Documentary evidence was produced vide Exs.22 to 34 and the Special Land Acquisition Officer was examined at Ex.36. Again, no oral or documentary evidence was led by the appellant. And again, on the same basis of the award in Compensation Case No.12/94 of the adjoining village Kharachiya, market price was fixed at Rs.150/= per sq. mtr. by the impugned judgment.

8.1 Going through the Records & Proceedings of original Land Reference Case No.777/94, it was noticed that after the order of reference, a regular plaint running into 16 pages was filed and in that, besides the claim for additional compensation for the land @ Rs.40/= per sq. ft., claim of Rs. 4000/= for, in all 5 trees, was made. Over and above Rs.1,42,500/= awarded by the Land Acquisition Officer, a claim for Rs. 35,52,820/= was made in the plaint dated 9.12.1992. Thereafter, an application in the nature of appeal dated 6.7.1996 was made with a prayer to quash and set aside the order dated 10.5.1996 passed by the Special Land Acquisition Officer by which the application of the claimants for making an award in respect of standing crops was rejected. That application was titled and described as "Standing Crops Reference Application". Thereafter, by an application dated 3.1.1998 (Ex.6), the applicant had sought production of panchnama and valuation report showing the amount of compensation for standing crop. Thereafter, on page 42 in the Records and Proceedings appears a draft order, without date or signature, granting the aforesaid application. Thereafter there is an interim award in Land Reference Case No.777/94 by which Rs.47,000/= is purported to have been awarded with interest and costs. That order is dated 7.9.1998 and purported to have been made in terms of the order Ex.9, which order is not on record. The award dated 9.10.1992 in Compensation Case No.10/89 which was under challenge before the Court is on record at Ex.33. According to that award, the lands in

question are near developed commercial or residential area and south of village Bajwa and abutting on Bajwa-Koyali Road. After considering the claims and evidence of the claimants and the recent instances of sale or acquisition in the area, the Land Acquisition Officer had fixed market price at Rs.17.50 per sq. mtr. and also awarded the statutory benefits under Section 23 of the Act. Compensation for structures and trees was also separately calculated and awarded vide Annexure-C to the award, according to which, the structures were mostly unauthorised tin roofs or cabins and trees in the land of the claimants in Land Reference Case No.777/94 were in all three valued at Rs.75/=. As against that, not only that a claim of Rs.47,000/= with costs and interest was already allowed, but an additional amount of Rs.84,800/in Land Reference Case No.778/94 and Rs.37,400/= in Land Reference Case No.959/96 were awarded by the impugned judgment on the basis of unauthenticated documentary evidence introduced by the same process as described hereinabove.

8.2 During the course of arguments, it was revealed by the learned counsel that the aforesaid interim awards dated 7.9.1998 made by the Extra Assistant Judge in Land Reference Cases No.414/94, 417 to 420/94, 423/94, 451/94 and 777/94 were challenged in this Court in First Appeals No.7893 to 7900 of 1999 which were disposed by this Court by order dated 17.3.2001 with the observation as under:

> "The learned AGP has given out that the main reference is still pending before the reference Court and that by this interim award, the direction has been issued for payment of the amounts against the price of standing trees with interest on the market price for trees on the acquired lands at the rate of 9% per annum from the date of taking over the possession till one year and thereafter at the rate of 15% per annum till the date of realisation from the date of the award or from the date of taking possession whichever is earlier in time. The learned AGP has also given out that the possession had already been taken over way back in the year 1994. The learned AGP has failed to point out any illegality or infirmity in the impugned order passed by the reference Court on 7th Sept. 1998. Whereas the impugned order is only an interim award and the main reference is still pending, naturally, the reference Court will keep in view this interim award at the time of passing the final award. No case is made out for

interference. All these eight First Appeals have no merit. The same are hereby dismissed with no order as to costs."

8.3 The reasoning in the impugned judgment for awarding compensation for trees in two cases of this group reads as under:-

"12. In light of above facts, it is duly proved that the present claimants are not getting the amount of the standing trees to which they are likely to be entitled. It is a fact prima facie on record and simply because the possession receipts shows no standing crops, it is not sufficient that there were no standing crops, the Assistant Director of the Agriculture made a false assessment therefore relying upon the documentary evidences of the opponent side for which there is no reason to disbelieve that the claimants are held entitled to recover compensation of the standing trees under the present references."

Thus, the impugned judgment and order awarding total additional compensation of nearly Rs.65 lakhs with interest and costs was passed and decree was drawn on the same day. No arguments are addressed in these appeals to challenge, or on the basis of, the aforesaid interim awards.

9. First Appeals No.2431 and 2432 of 2004:

In these two appeals, the lands acquired for the same purpose were of village Kharachiya and the award fixing market price at Rs.12.50 per sq. mtr. in Compensation Case No.40/87 was under challenge before the Court in Land Reference Case No.1016/93. As against the compensation of Rs.44,996/= awarded by the Land Acquisition Officer, a claim for total amount of Rs.15,23,013/= was made without any mention of any trees or compensation therefor in the plaint. The date of notification under Section 4 of the Act was 13.7.1989 and by an almost identical judgment, relying upon the award in Compensation Case No.12/94 (Ex.20), market price was

fixed at Rs.150/= per sq. mtr. And, by the same process of inducting documentary evidence vide list Ex.32 and even without assigning any exhibit numbers (except in the Roznama) on the documents produced vide Ex.32, the impugned judgment awarding additional compensation of Rs.1,06,520/= in Land Reference Case No.1015/93 and Rs.1,06,000/= in Land Reference Case No.1016/93 for trees and awarding total additional compensation of Rs.10,70,912/= with costs and interest was passed. The decree was drawn on the same day, i.e. 7.05.2004.

10. Shocking common features:

The shocking common features that emerge from the record of the trial Court and four judgments impugned in these appeals may be summarised as under:-

(a) The amounts not even claimed by the claimants in the plaint filed by them are awarded by the impugned judgments without any basis or justification on record and without any discussion of calculation.

(b) The depositions of the claimants are in the form of printed affidavits obviously prepared outside the Court and years before being produced in the Court. Before such depositions are subjected to cross-examination, nothing more is stated on oath to justify or substantiate the additional claims towards trees. Cross-examination by the learned Additional Government Pleader had completely taken away the basis for such additional claims.

(c) The learned advocate for the appellant herein in the trial Court, Mr.B.M.Parikh, in each case, subjected the witness to a very short and cursory cross-examination. His vakalatnama along with his name shows the name of Mrs.Paragi K. Parikh as advocate indicating that she was associated with "B.M.Parikh and Associates". In all these appeals, learned advocate Mr.K.M.Parikh has appeared in this Court for the respondents-original claimants and his vakalatnama also shows alongwith him the name of Mrs.Paragi K. Parikh. In the group of Land Reference Cases Nos.414, 417, 418, 419, 423, 451 and 777 of 1994, the interim award dated 7.9.1998

clearly shows in the judgment the appearance of Mr.B.M.Parikh as the advocate for the applicant-claimants-alongwith Mr.K.M.Parikh and Mr. Rajubhai Chhaniwala. This has to be seen in the context of the fact that important documentary evidence in the form of statements to justify the huge additional amounts as compensation for trees were introduced after such introduction being noticed by the learned advocate Mr.B.M.Parikh and signature on his behalf being obtained on the lists of such documents. Such introduction of documentary evidence after filing of the written arguments by the parties and apparently no objection being voiced against reliance upon such unauthenticated plain paper copies of statements by the advocate of the acquiring body, (the appellant herein) raises serious doubts and calls for explanation. No evidence whatsoever being led on behalf of the appellants herein has also to be seen in that context.

(d) The extraordinary despatch with which all the judgments are delivered within two days of the submission on the same day of written arguments for both sides and awards being drawn on the same day or the very next day; the exorbitant hike in the market price, resulting into additional liability for the acquiring body of exceeding total Rs.18 crores, on the basis of the award in Compensation Case No.12/94 without reference to the difference of six years in the date of section 4 notification and the award of compensation for trees, in all exceeding Rs.63.5 lakhs, without any basis and discussion in the impugned judgments clearly indicate irregularities of the worst kind. All the four impugned judgments and awards dated 7.5.2004 are signed by Mr.R.R.Parekh, 3rd Joint Civil Judge (S.D.), Vadodara.

11. Arguments and the judgments referred:

Besides pointing out the lacuna and lapses in the impugned judgment, it was submitted by the learned counsel for the appellant Mr.M.R.Bhatt that fixing of the market price of the acquired lands was arbitrary, exorbitant and illegal.

11.1 Relying upon the judgment of the Supreme Court in RAVINDER NARAIN AND ANOTHER v. UNION OF INDIA [AIR 2003

SC 1987], it was submitted that if comparable sale was within reasonable time of the date of notification under Section 4 and if the lands were adjacent to and having similar advantages as the lands acquired, then only it can form the basis for fixing market price. Relying upon the judgment of the Supreme Court in KASTURI AND OTHERS v. STATE OF HARYANA [AIR 2003 SC 202], it was submitted that the fact that an area was developed or adjacent to a developed area will not ipso facto make every land situated in the area also developed to be valued equally particularly when vast tracts are acquired for development purpose.

11.2 The judgment in SPECIAL DEPUTY COLLECTOR v. KURRA SAMBASIVA RAO [AIR 1997 SC 2625] was relied upon to point out the well-settled legal position that the claimants stood in the position of plaintiffs and burden of proof was on the claimants to prove by adducing cogent and acceptable evidence that the lands were capable of fetching higher compensation than what was determined by the Land Acquisition Officer. It was the paramount duty of the Courts of facts to subject the evidence to very close scrutiny, objectively assess the evidence tendered by the parties and on proper consideration thereof in correct perspective to arrive at adequate and reasonable market value. Misplaced sympathies or undue emphasis solely on the claimants' right to compensation would place very heavy burden on the public exchequer to which others have to contribute by direct or indirect taxes. The Court must always determine market value prevailing on the date of notification under Section 4 (1) of the Act and not on the basis of what was claimed by the parties. If feats of imagination were allowed the sway, the Land Acquisition Officer/Collector would overstep judicial decisions/quasi judicial orders and would land in misconduct amenable to disciplinary law.

11.3 It was also submitted by Mr.Bhatt that, as observed by the Supreme Court in STATE OF HARYANA v. GURCHARAN SINGH [1995 (Supp.) 2 SCC 637], it is settled law that the Collector or the Court who determines the compensation for the land as well as fruit-bearing trees cannot determine them separately. The compensation is to the value of the acquired land. The market value is determined on the basis of the yield. Then necessarily applying suitable multiplier, the compensation needs to be awarded. Under no circumstances the Court should allow compensation on the basis of the nature of the land as well as fruit-bearing trees. In other words, market value of the land is determined twice over once on the basis of the value of the land and again on the basis of

the yield got from the fruit-bearing trees.

12. It was submitted by learned counsel Mr.K.M.Parikh, appearing with Mr.Rajubhai Chhaniwala and Mrs.Paragi K. Parikh for the respondent-original claimants, that the trial Court had rightly taken judicial notice of the fact that after 1980 there was a brisk hike in the price of lands and as Vadodara district is just adjacent to industrial area, it could well be presumed that lands were bound to fetch more price; and that fact was over-looked by the Special Land Acquisition Officer. He also submitted that some of the claimants had not made specific claims of compensation for trees, but necessary evidence in the form of statements was placed on record and exhibited in evidence which was in the form of panchnama made at the time of taking possession and that reflected the number of trees standing on the land at the time of taking possession. He emphasised the fact that value of lands was increasing by leaps and bounds and fixing of market price at Rs.150/= per sq.mtr. against the demand of Rs.200/= per sq. mtr. was justified.

12.1 Mr.K.M.Parikh relied upon the judgment of the Supreme Court in ADUSUMILLI GOPALKRISHNA v. SPECIAL DEPUTY COLLECTOR (LAND ACQUISITION) [AIR 1980 SC 1870] to submit that the assessment of compensation must take into account the use of the land and its capacity for a higher potential, its precise location in relation to adjoining lands and the use to which neighbouring land has been put.

12.2 Relying upon the judgment K.KRISHNA REDDY v. SPECIAL DEPUTY COLLECTOR, LAND ACQUISITION UNIT II, LMD, KARIMNAGAR, AP [AIR 1988 SC 2123], it was submitted that the power of the appellate Court to remand the matter ought not to be exercised lightly. It should not be resorted to unless the award is wholly unintelligible. If remand was imperative and if the claim for enhanced compensation was tenable, it would be proper for the appellate court to do modest best to mitigate hardships and the appellate Court may direct some interim payment to claimants subject to adjustment in the eventual award. Remand means another round of litigation and further delays. It is a common experience that the purchasing power of rupee is dwindling with rising inflation. The Indian agriculturists generally have no avocation. If uprooted, they will find themselves nowhere. They have no savings to draw and nothing to fall back upon. In all such cases, it is of utmost importance that the award should be made without delay.

12.3 Relying upon the judgment of the Supreme Court in SPECIAL LAND ACQUISITION OFFICER v. SRI SIDDAPPA OMANNA TUMARI [AIR 1995 SC 840], it was submitted that: "When lands are notified for acquisition, all the persons interested in any of those lands who are entitled to obtain compensation therefor, taking advantage of the statutory provisions for voluntary settlement of the amount of compensation payable for their lands enter into an agreement with the Collector in that behalf and receive such amount from the Collector as per his award made accordingly under the provisions of the L.A.Act. Ordinarily, no room for doubting the authenticity or genuineness of the award for compensation made by the Collector on the basis of such agreement can arise. The evidentiary value of such award determining the amount of compensation made under Section 11 (2) of the L.A. Act by the Collector ought to necessarily increase depending on the proportion which the area of lands covered by the award may bear to the total area of the land covered by the notification for acquisition. Such being the evidentiary value of an award made by the Collector under sub-section (2) of Section 11 of the L.A. Act, as regards the market value of the lands covered by notification under Section 4 (1), the Court determining the compensation payable for other acquired lands covered by the same notification cannot ignore altogether from its consideration such award made under Section 11 (2)".

13. Proper market-value in the present groups of cases:

Bearing in mind the well-settled legal principles adumbrated in the aforesaid judgments, the compensation has to be determined in the peculiar facts and circumstances of these cases. As seen earlier, the Land Acquisition Officer has, while making the award in original Compensation Case Nos.40/87, 41/87, 42/87 and 10/89 taken into consideration the relevant factors including the area, development of the village in which the acquired lands are situated, market price prevalent at the time of notification under Section 4 of the Act, fertility and potentiality of the lands as also trees and the structures standing on the lands. The market value fixed by the Land Acquisition Officer, however, is too low if the subsequent awards in comparable cases are taken into account. It appears from the awards that the lands of village Koyali and Kharachiya, due to their location, are different and distant from the lands of village Bajwa, which is nearer to the main road and the lands therein were comparable to the lands of village

Chhani. If the award in Compensation Case No.12/94, mainly relied upon in the impugned judgments, were a good indicator of the market price prevalent in the year 1995, the market value in the year 1995 would come to Rs.114/= per sq. mtr. (after deducting solatium and yearly increase of 12%) and having regard to the date of notification under Section 4 of the Act in the present group of cases, the market price would come to Rs.60/= per sq. mtr. in September, 1989 if the rates were reduced only by 10% per year. If the award in Compensation Case No.40/87 (A) for the lands in village Kharachiya were to be taken as the basis since the date of section 4 notification in that case was 13.7.1989, the market price in the present group of cases would come to Rs.48/= per sq. mtr. The other comparable instance of the acquisition of lands situated in village Chhani in the year 1988 is provided by the consent award in Compensation Case No.43/87 (Ex.22) in Land Reference Case No.1155/94. The market price of the acquired lands fixed in that case was Rs.112.55 ps. per sq. mtr. which included solatium, additional compensation and interest while the date of section 4 notification therein was 28.9.1988. That award was made on 29.6.1990 and it was expressly agreed that no additional compensation on account of increase in prices and no interest was to be paid. Therefore, on that basis, the net market price of the lands acquired in these cases in the year 1989, may work out to roughly Rs.63/= per sq. mtr., if the other amounts were to be awarded in terms of Section 23 of the Act. There is no other independent evidence of the market price prevalent at the relevant time. Having regard to the respective awards of the Land Acquisition Officer in each group of the cases and the aforesaid evidence of comparable market price at the relevant time, it appears to be reasonable to fix the market price for the lands of village Koyali at Rs.55/= per sq. mtr., for the lands of village Kharachiya at Rs.50/= per sq. mtr. and for the lands of village Bajwa at Rs.65/= per sq. mtr.

14. There is no reliable and authentic evidence worth the name to justify any claim of compensation for trees. Although one claimant in each group of the cases had entered the box, he failed to even mention, much less substantiate, the existence of any trees on the lands in question at the time of taking possession. The introduction of documentary evidence of doubtful authenticity and veracity was, purposely or otherwise, never subjected to any cross-examination or scrutiny and the impugned judgments are wholly devoid of any worthwhile discussion regarding compensation for the

trees. Therefore, the market value of the acquired lands are required to be modified as discussed hereinabove and the claims of compensation for the trees are required to be rejected.

15. Conclusion and order:

The impugned judgments are accordingly set aside and the appeals are partly allowed with costs. The market value for the acquired lands in First Appeal Nos.2478 to 2493, 2494 to 2502, 2562 to 2566 of 2004 is fixed at Rs.55/= per sq. mtr., in First Appeal Nos.2433 to 2437 of 2004 at Rs.65/= per sq. mtr. and in First Appeal Nos.2431 and 2432 of 2004 at Rs.50/= per sq. mtr. The additional amounts of compensation shall be arrived at on that basis after deducting the rates fixed by the Land Acquisition Officer. The respondent-claimants shall be entitled to be paid the amounts of solatium and interest on the basis of the amounts of additional compensation as indicated hereinabove in accordance with the provisions of Section 23 of the Land Acquisition Act, 1894 and interest thereon shall be paid @ 9% per annum from the date of possession till the amounts were deposited in the Court. In the facts of these cases, overall liability of additional compensation, by virtue of the impugned judgments, is stated to have increased by almost 12 crore rupees on account of interest only as against the additional compensation amount of total Rs.6,82,04,044/=. The discretion to award interest under the provisions of Section 28 of the Act has to be exercised having regard to the unexplained delay and prolonged pendency of the claims in the trial Court, for about a decade, before the references were hurriedly decided in a matter of months as also the recent general reduction in rates of interest on fixed deposits. Therefore, the interest @ 9% throughout the period shall meet the ends of justice. The respondents shall also be entitled to proportionate costs upto the stage of impugned judgments. Costs of these appeals shall be borne by the respective respondent-claimants in each appeal and shall be deducted from the amounts to be paid to the claimants. The Civil Applications in all these First Appeals shall stand disposed in the aforesaid terms and Rule therein shall stand discharged subject to the right of the appellant to withdraw the amounts deposited in excess of the amounts required to be paid to the respondents under this judgment. Decree shall be drawn and amounts shall be permitted to be withdrawn by the respective parties accordingly.

16. In view of the highly distressing and irregular

state of the proceedings before the trial Court, as summarised in paragraph 10 hereinabove, office is directed to keep the original records and proceedings in safe custody of the Registrar (Administration) and place before the Hon'ble the Chief Justice a copy of this judgment for such action as may be deemed proper. We are constrained to part with this judgment with the observation that the proceedings and the product in the form of the judgments impugned in these appeals, prima facie, appear more like a collective and collusive enterprise rather than an adversarial proceeding between the parties and an impartial and honest adjudication. It is hoped that the authorities concerned will take appropriate action as may be thought fit in the facts described hereinabove.

Sd/-

(M.S. Shah, J.)

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)